

APR 4 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

ANGEL ROSALES MONTES,

Plaintiff-Appellant,

v.

CITY OF BELLFLOWER,

Defendant-Appellee.

No. 02-55492

D.C. No. CV-98-05613-FMC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Argued and Submitted March 6, 2003
Pasadena, California

Before: LAY,** HAWKINS, and TALLMAN, Circuit Judges.

Angel Montes appeals the district court's dismissal of his 42 U.S.C. § 1983 claim against the City of Bellflower. The district court gave issue-preclusive

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

effect to the City Council's decision to revoke Montes' permit to sell alcohol. The district court also rejected Montes' contention that he reserved his federal claims under England v. Louisiana State Bd. of Med. Examiners, 375 U.S. 411 (1964). While the district court properly gave preclusive effect to the City Council's decision to revoke Montes' permit, we find that the court erred in rejecting Montes' England reservation.

England allows a party who has been remitted to state court to reserve the right to return to federal court for a ruling on the federal claims. England, 375 U.S. at 415. The Supreme Court intended to give litigants the right to have their federal claims resolved in federal court. Id. at 415-16. While some courts have applied England only in Pullman abstention cases, the Ninth Circuit has made clear that England applies whenever a party finds itself involuntarily remitted to state court. United Parcel Serv., Inc. v. California Pub. Utilities Comm'n, 77 F.3d 1178, 1185 (9th Cir. 1996).

In the present case, the district court held that Montes' England reservation was ineffective because his case did not involve Pullman abstention. The district court's ruling is contrary to United Parcel. The district court should have heard Montes' 42 U.S.C. § 1983 claims because Montes properly filed an England reservation before being remitted to state court. We thus remand the case back to

the district court for consideration of Montes' civil rights claims.

REVERSED AND REMANDED